

REMARKS

Amendments to the claims have been made to respond to the issues and concerns raised in the Office Action, to clarify aspects in the specification and claims, and to refine claim language. The amendments are believed to be consistent with the disclosure originally filed. The amendments also have been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively affecting the scope of protection provided by the disclosure and claims of the present application, and also in a manner that avoids prosecution history estoppel, limitation of the scope of equivalences, or the like. Any amendment should not be construed as an admission regarding the propriety of any objection or rejection raised in any Office Action, and the Applicant reserves the right to pursue the full scope of the unamended claims in any subsequent patent application as may be appropriate.

Claims 221-222, 225, and 227 have been amended. Claims 1-220, 223, and 226 have been cancelled. Claims 221-222, 224-225, and 227 remain in the application. Each amendment is believed to have been made in accordance with Rule 121. However, should any unintended informality exist, it is requested that the undersigned be contacted by telephone so that it may be resolved as expediently as possible. It is believed the amendments fully respond to the issues raised in the Office Action. Further detail with respect to specific points raised in the Office Action is offered below.

The Office has raised a concern under 35 U.S.C. 112, first paragraph, with respect to claims 221-227. Applicant disagrees that these claims pose any issues under 35 U.S.C. 112, first paragraph. The recitation of claim 221(h) is supported by Example 1 of the specification. Specifically, the portion of claim 221(h) reading “fertilizing at least one egg... comparable to an unsorted artificial insemination sample having about an equal number of sperm cells” is supported by the statements in Example 1 of the specification reading “[s]exed semen and liquid control semen were inseminated using side-opening blue sheaths (IMV), one half of each straw into each uterine horn (3 x 10⁵ live sperm/heifer).” The liquid control semen is stated in Example 1 of the specification to be

“a liquid semen unsexed control.” In this manner, it is clear that two insemination doses (one sexed and one unsexed) having about equal numbers of sperm were utilized. Moreover, the portion of claim 221(h) reading “fertilizing at least one egg... at success levels statistically comparable to an unsorted artificial insemination sample...” is supported by Example 1 of the specification, where it is stated that “[a]lthough the pregnancy rate with sexed semen was only 80% of controls, this difference was not statistically significant (>0.1).” In this manner, it is clear that pregnancy rates between the two doses were compared and found to be statistically comparable. Applicant notes that its intention regarding claim 221(h) simply is to claim the embodiment set forth in Example 1 of the specification. If the Office believes this recitation is insufficient to do so, Applicant respectfully requests the Office to state its reasons with particularity so that Applicant may develop acceptable language for the claim. In addition, although Applicant disagrees that claims 221(f), 222-223, 225-226, or 227 pose any issues under 35 U.S.C. 112, first paragraph, Applicant believes the amendments to the claims address the Office’s concerns. Where possible, Applicant has amended the claims utilizing the language quoted in the Office Action or a close analog thereto.

The Office has raised several concerns under 35 U.S.C. 103. While Applicant believes the claims pose no issues under 35 U.S.C. 103, Applicant’s amendments to the claims are believed to address the Office’s concerns. Moreover, no combination of references teaches the success levels recited by Applicant’s claim 221 under the conditions recited by the claim and supported by Example 1 of the specification, discussed above.

The Office raises various double patenting concerns. Although Applicant disagrees that the claims pose a double patenting issue, please find included with this response a terminal disclaimer, which is believed to resolve the Office’s double patenting concerns.

CONCLUSION

The Applicant, having addressed each of the concerns raised in the Office Action, respectfully requests reconsideration and withdrawal of the rejections and objections to the application. Allowance of claims 221-222, 224-225, and 227 is requested at the Office's earliest convenience.

Dated this 19th day of January, 2009.

Respectfully submitted,
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